

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 15, 2001 at 9:10 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: Sen. Jerry O'Neil (R)

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 426, SB 416, SB 417,
2/12/2001
Executive Action: SB 426

EXECUTIVE ACTION ON SB 426

Discussion:

Ray Riser, Missoula Employment Services explained conditions of a release from a judge and said this legislation would enhance safety of a community. He mentioned how the present statute read and felt the proposed legislation in this bill would alleviate the need for the petition to the court for a bench warrant and the pretrial representative would have authority to arrest that defendant.

Diana Leibinger-Koch, Staff Attorney with Department of Corrections, addressed the constitutionality of this bill. She said people who were released on pretrial detention and have been charged with a crime, are in the same position as a probationary parolee.

Motion/Vote: SEN. HALLIGAN moved **SB 426 DO PASS AS AMENDED.**
Motion carried unanimously.

HEARINGS ON SB 416 & SB 417

Sponsor: SEN. DUANE GRIMES, SD 20, CLANCY

Proponents: Steven Ertelt, Executive Director, MT Right to Life
Julie Millam, Executive Director, MT. Christian Coalition
Sharon Hoff-Brodowy, Montana Catholic Conference

Opponents: J.J. Straight, Exec. Director, Planned Parenthood
Joan Bishop, League of Women Voters
Daniel Casey, Montana Human Rights Network
Bob Campbell, Author of Section 10, Article 2, Right of Privacy in Montana Constitution,
Stacey Anderson, Executive Director of MT. NARAL
Rebecca Moog, Montana Women's Lobby
Beth Brennemen, Legal Director, ACLU
Judy Smith, Missoula Citizen
Bill Hunt, Former Justice of MT Supreme Court
Al Smith, Montana Trial Lawyers Assoc.

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, CLANCY, said the subject matter of these bills was very similar. He pointed out the similarities of the bills to HB 482 from the 1995 Legislature and handed out the minutes from that hearing **EXHIBIT(jus38a01)**. He presented an understanding for the constitutional questions that were raised as a result of decisions in Montana courts and explained how these bills would attempt to remedy those obstructions.

He pointed out the issue at the local level as the privacy clause. He said suggestions that neither the right of privacy nor any other right guaranteed by the bill of rights secures an abortion right. SB 417 is the proposal to the difference of opinion as the constitutions intentions and SB 416 reinstates HB

482 from the 1995 Legislature making parental notification effective.

{Tape 1; Side B}

Proponents' Testimony:

Steven Ertelt, Executive Director, Montana Right to Life, handed in his testimony **EXHIBIT(jus38a02)**.

Julie Millam, Executive Director, Montana Christian Coalition, handed in her testimony **EXHIBIT(jus38a03)**. She handed out information from the internet pertaining to abortion issues **EXHIBIT(jus38a04)**.

Sharon Hoff-Brodowy, Montana Catholic Conference, handed in her testimony **EXHIBIT(jus38a05)**.

{Tape 2; Side A}

Opponents' Testimony:

J.J. Straight, Executive Director, Planned Parenthood, handed out information regarding a court case **EXHIBIT(jus38a06)**. She explained young women who come to planned parenthood and they are in need of the counseling process. The reasons for young women to not inform their parents is due to fear of abuse and fear of being rejected from their homes. She explained the process of counseling these young women undergo before an abortion procedure.

Joan Bishop, League of Women Voters, handed in her testimony **EXHIBIT(jus38a07)**.

Daniel Casey, Montana Human Rights Network, handed in his testimony **EXHIBIT(jus38a08)**.

Bob Campbell, Author of Section 10, Article 2, Right of Privacy in Montana Constitution, handed in a statement **EXHIBIT(jus38a09)**

Stacey Anderson, Executive Director of MT. NARAL, handed in her testimony **EXHIBIT(jus38a10)**.

Rebecca Moog, Montana Women's Lobby, explained her parental rights and expressed a do not pass of these two bills.

Beth Brennemen, Legal Director, ACLU, felt young women today do communicate with their parents and there was no need for amending the constitution with problems that do not exist.

Judy Smith, Missoula Citizen, said she works with young women who are pregnant teens, and she explained how many of these young women come from low-income homes and have no support system in the home from parents and family. She felt that these young women learn the responsibility of life since they live in fear of abuse and rejection from family.

{Tape 2; Side B}

Bill Hunt, Former Justice of MT Supreme Court, pointed out the case of Whitlen vs. Montana & Josephine Mazurek and felt it sums up the argument that could be made with this issue. He said the judiciary has enough problems without amending the constitution, and these bills would effect legislation considerably.

Al Smith, Montana Trial Lawyers Assoc., mentioned how he is a parent, and he felt these bills were bad public policy by changing the constitution. He said they give choices to their daughter, and there is no need to have this law telling them how to be parents and it shouldn't be imposed to other parents in the state.

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked if there is any other reference to a medical procedure in the constitution, and why would it be a good idea to put something into the constitution that would describe a medical procedure. **SEN. GRIMES** said this law is unique and he believes the circumstances involved, of having the parents' rights over a child, are being dismissed. He mentioned the CI75 Decision dealing with the constitution, which has an unintended consequence.

SEN. DOHERTY asked why it would be good public policy to enact a bill and address an amendment. **SEN. GRIMES** answered not all of the bill is unconstitutional and he referred to Section 7 of SB 416.

SEN. DOHERTY respected the issue of beliefs that people want to end legal abortions. He asked if by passing both of these bills, would it be the first step in a long process of action. **SEN. GRIMES** explained these bills were for the rights of parents, not the rights of minors.

SEN. DOHERTY asked if the language in SB 417 could be understandable considering the bill of rights and how could the constitution elevate one right over another right. **Beth Brennemen** said by reviewing the suggested language there is a clear intention to amend other parts of the constitution without making it a part of the bill.

SEN. DOHERTY asked what the intent was notwithstanding any other provision of the constitution language. **SEN. GRIMES** said the intent was for the privacy clause, and the equal protection clause, not be construed to usurp the parents rights to be notified.

CHAIRMAN LORENTS GROSFIELD asked how the language in these bills worked with the CI75 Decision. **Clay Smith, Attorney General**, said there may be a CI75-like challenge if this bill were to pass. He said this would modify the privacy provision and the equal protection provision of the constitution and that is why the CI75 Decision is pernicious.

SEN. MIKE HALLIGAN asked how the parental notification can work since it doesn't enhance the legal protection of a child. **Clay Smith** said the court would read the provision as the legislature having authority to adopt notification statutes and that would not engage balancing the determination as to whether the statute helped the minor or the parents.

SEN. RIC HOLDEN asked how an intimate family decision can be made if the parents are not notified or aware of the situation. **Joan Bishop** said young women should be capable of going to their parents so an intimate decision could occur. She felt if communication would not occur, then it could be dangerous to the young women and they would hope this situation would work.

{Tape 3; Side A}

SEN. HOLDEN asked how a parent is included in an intimate family decision. **Joan Bishop** was concerned with the word "must" in this situation. She said a young women must go to the parent to discuss an intimate situation.

SEN. AL BISHOP asked if any physicians had been contacted. **SEN. GRIMES** said he had not had contact with any physicians. He pointed out five states that have solid parental notifications and explained the bypass provision.

SEN. BISHOP asked how the parents could receive a notice by certified mail. **SEN. GRIMES** said if a notice is not received, then the court should be able to authorize one.

SEN. HALLIGAN pointed out the bill states one parent could receive a notice, while only one parent may have custody. **SEN. GRIMES** believed most states have the single parent notification provision.

SEN. HALLIGAN asked what the possible problems could be with the language. **SEN. GRIMES** said he worked with this language and it may fall in a broad scope of the CI75 Decision.

SEN. WALT MCNUTT asked if all parents are good parents. **SEN. GRIMES** answered no, they are not all good parents and there are troubled homes. He felt he was talking about the good homes and good parents for these situations.

SEN. MCNUTT asked if this constitutional amendment would cause emotional strife in society and how can the equation be balanced. **SEN. GRIMES** explained the bypass provision and said it is very broad. He said both sides of the issue need to be weighed every day.

SEN. DOHERTY said within SB 416, it seemed a civil action was being created and establishing a presumption that the failure to notify is malice, which would subject the provider to punitive damages. He asked where the references for the bypass were in this bill and asked if the sponsor was presuming the medical provider would be acting in malice and would commit malpractice. **SEN. GRIMES** answered it was a correct understanding of that section and there are exceptions if notices are waived pertaining to a medical emergency.

SEN. HOLDEN asked how many planned parenthood facilities conduct abortion services in this state. **J.J. Straight** explained the facilities location and said there are three that conduct abortion services in the state; Helena, Billings and Missoula.

CHAIRMAN GROSFIELD asked if SB 417 would pass. **Scott Creighton, Executive Director, ACLU**, said there were too many variables involved with this bill to answer the question. **J.J. Straight** explained the state of Colorado had a parental notice valid initiative, which did pass by the vote of the people and was enjoined by the court because it was found unconstitutional.

CHAIRMAN GROSFIELD said he only asked this question because if this were to pass the opponents should have been proponents. He

then asked if the judicial bypass was protected enough with confidentiality in SB 416.

Closing by Sponsor:

SEN. DUANE GRIMES, SD 20, CLANCY, answered there was a confidentiality provision within that bill and he felt it was sufficient. He closed by saying these bills provide rights of the parents to assist their daughters. He said these bills affect young women in crisis, who in a moment of crisis may make a poor decision.

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus38aad)